



MILLER HOMES LLC  
16450 SHALLOW POND ROAD  
CHARLOTTE, NC 28278

**RE: VARIANCE**  
**16119 GARDENSIDE LANE**  
**CASE NUMBER 2021-051**

To Whom It May Concern:

At its remote meeting on June 29, 2021 the City of Charlotte Zoning Board of Adjustment (“Board”) **granted** two variances to add a roof over an existing deck:

1. A 36 foot variance from the 50 foot Lake Wylie Watershed Overlay buffer.
2. A variance from the 25% encroachment allowance to allow a covered porch to encroach 60% into required rear yard.

**The Board based its decision on the following findings of fact:**

1. The applicant is Miller Homes, LLC.
2. The proposed site is located at 16119 Gardenside Drive, further identified as tax parcel 217-232-15.
3. The subject parcel is zoned R-5 (single family) and located within the Critical Area of the Lower Lake Wylie Watershed Overlay.
4. Per Code Section 10.708(1), the property is subject to a 50 foot undisturbed vegetative buffer measured from the full pond elevation of Lake Wylie.
5. Per Code Section 10.708(3), no permanent structure or built upon areas shall be allowed within the 50 foot watershed buffer with limited exceptions.
6. Per Code Section 9.205(1)(g), the minimum rear yard is 35 feet.
7. The site is roughly 0.691 acres and contains a 1976 manufactured home that encroaches up to 36 feet into the 50 foot watershed buffer, and 21 feet into the required 35 foot rear yard.
8. The home meets the definition of a nonconforming structure because it was developed prior to the watershed buffer and rear yard regulations.
9. The applicants wish to convert an existing deck into a covered porch.
10. Per Code Section 12.106(3)(b), a covered porch can encroach up to 25% or 8.75 feet into the required rear yard.
11. The proposed covered porch will encroach into the required rear yard 60%, and exceed the permitted 25% encroachment allowance.
12. The proposed covered porch will encroach 36 feet into the 50 foot watershed buffer.
13. The applicants are requesting two variances to allow the construction of the roof over the deck to convert it to a covered porch: 1) A 36 foot variance from the required Lower Lake Wylie Watershed Overlay Critical Area 50 foot buffer; and 2) A variance from the 25% encroachment allowance to allow a 60% encroachment into the required rear yard.
14. The hardship was not caused by the applicants.
15. The existing home has an established 36 foot encroachment into the 50 foot watershed buffer, and an established 60% encroachment into the 35 foot required rear yard.
16. The majority of the home and deck are located in the 50 foot watershed buffer and rear yard.
17. The hardship is caused by conditions peculiar to the property.

18. The lot's shape is unique with the rear of the property being an inverted 'v' shape which causes the 50 foot buffer to cut into the middle of the property and limits the allowed buildable area.
19. Granting the variance will not alter the essential character of the area.
20. The requested variance will not exceed the established watershed buffer and rear yard encroachments.
21. Granting the variance will uphold public safety.
22. There is an impervious cement patio poured under the deck that is original to the home, so the addition of a roof above the deck will not increase the existing built-upon area on the lot.
23. Mecklenburg County Storm Water Services does not oppose the requested variance because it will not increase the existing built-upon area within the 50 foot watershed buffer.
24. Hardships result from the unique 'v' shape of the rear property line, and the existing encroachment of the home into the 50 foot watershed buffer.

**Conclusion of Law:**

1. Unnecessary hardships would result from the strict application of the Ordinance.
2. The hardship results from conditions that are peculiar to the property (location, size or topography).
3. The hardship results from actions taken by the applicant or the property owner.
4. The requested variance is not consistent with the spirit, purpose, and intent of the Zoning Ordinance, in that the public safety is secured and substantial justice is achieved.

If any permits are required, please make sure the variance case number is referenced on the permit application and/or site plan. Section 5.111 of the Zoning Ordinance provides that unless otherwise specified by the Board, any decision of the Board granting a variance shall automatically expire if a permit or a certificate of occupancy pertaining to the need for the variance is not obtained within two (2) years from the date of the meeting of the Board at which the Board rendered its decision.

Sincerely,

*Patrick Welch*

Patrick Welch, Chairman

06/30/2021

Date

**DECISION FILED IN THE  
PLANNING DEPARTMENT:**



Shad Spencer, Zoning Administrator

June 30, 2021

Date